

For Pretrial Problems

A new "Fair Trial Free Press" study has drawn both praise and criticism from the journalism establishment.

The most important conclusion drawn in a report from a special committee of the Association of the Bar of the City of New York is that the legal profession needs to put its own house in order instead of attempting to control news media.

In a final report the committee, headed by Federal Appeals Judge Harold R. Medina, concluded that the judicial establishment is largely to blame for publicity that prejudices a defendant's case.

Central theme of the report — it has been produced after three years study of the subject — is the preservation, as a matter of policy as well as constitutional law, of the First Amendment rights of freedom of the press and freedom of speech. The committee also shows itself opposed to any extension, by legislation or judicial rule-making, of the contempt powers of the courts against the news media, the lawyers or the police.

Such views brought praise from the American Society of Newspaper Editors in a statement from Robert C. Notson, president, who said: "We think the Medina Committee is eminently correct in:

- "Saying the Bill of Rights and the Constitution prohibit statutory and court control over the press and police in release and publication of pre-trial information, and
- "Condemning as unconstitutional the wave of judicial strictures that has issued across the nation in recent weeks, and
- "Rejecting extension of contempt powers by the courts over the press."

ASNE notes that "in these particulars the Medina Committee differs sharply with the Reardon Report of the American Bar Association," and adds, "we trust it may help to moderate the latter report."

Notson's statement, however, gives the thumbs-down to other aspects:

"We think that it is neither necessary nor proper to shut off virtually all communications between attorneys or public officers and the press before or during trial . . . the police code outlined in the report is likewise unduly

restrictive. It would attempt what the Constitution forbids — in of information to the public. Essence of is contained in these paragraphs:

"Because the end product of a prejudicial story is the printed page or the airwave, it is perhaps too easy to place blame on the news media. The committee fully realizes that much of objectionable material which reaches the public is instigated by or obtained through the cooperation of lawyers and the police. Nevertheless, it is equally certain that many stories are originated, and others inflated, by the newsmen themselves . . .

"We conclude this final report with a feeling of optimism. At last the community at large, as well as the courts and the judges, the lawyers and the Bar Associations, and every segment of the news media, has been alerted to the dangers of prejudicial publicity.

Encouraging Efforts

"All must now recognize that 'bedlam' and the 'carnival' and 'roman holiday' aspects of sensational criminal trials are a disgrace to American justice. The continuing efforts by all concerned to improve the situation are most encouraging.

"It is our belief that such reluctance as has been manifested by the news media is largely due to the fact that they have felt their independence and their First Amendment rights were under attack and in jeopardy . . .

"Moreover, the claim of the news media that the prejudicial publicity emanates largely from those connected in one way or another with the law enforcement agencies and others who are part and parcel of the judicial establishment and that the judicial establishment has not done what it should have done to correct these abuses, rests in a solid basis of fact."

The committee concluded that under the First Amendment, "the conduct of the press is largely beyond control of the courts and the judges," but that the most helpful step which can be taken to promote impartial trials is for the news media to adopt voluntary codes covering all aspects of crime reporting.

The 99-page report which is published by Columbia University is at variance with the ABA report which proposed contempt citations for newsmen who make "calculated efforts to affect a jury trial."

proceedings and the court rules, legislation or what else authorizing such contempt proceedings might well be held to be a violation of the First Amendment guarantees of free press and free speech."

No Interviews

The committee suggested that all police information be channeled to news media through a designated local police information officer, with no interviews allowed with investigating or arresting officers.

"Wherever feasible the information officer will encourage news media to enter into pool arrangements so as to reduce confusion and interference with the orderly process of law enforcement," the report said.

In its discussion of a police code, the committee proposed that information concerning a defendant be limited to "personal data not related to the crime or the character of the defendant." No statement of any kind by the defendant would be made public, and no interviews would be permitted to news media. There would be no photographing or televising of a defendant in police custody, in other than a public place.

The proposal would bar any comment on the motive of a crime, or any information concerning scientific evidence such as laboratory or ballistics tests or fingerprints. In a somewhat parallel code suggested for lawyers, the committee would ban any out of court statements or disclosures in a pending case, including the existence of or contents of a confession or admission.

However, in the committee's view all proceeding in open court and included in the Sixth Amendment guarantee of a public trial are public property. The trial judge may "caution, beg or beseech the news media not to publish matter brought out in open court" in the absence of the jury, "but he may not coerce obedience to such a suggestion by punishment for contempt of court."

The committee recommends much more stringent control of jurors by the courts. Judge Medina, in writing an introduction to the report sets the tone of the study in this comment: "We do not pretend to be the source of all wisdom in this or any other field of investigation.

At the same time we think we can do this only by facing thorny issues in a candid and forthright manner."

Salisbury to Get LIU's Polk Award

Harrison E. Salisbury of the *New York Times* is among the winners of the 19th annual George Polk Memorial Awards: presented by Long Island University for significant achievements in journalism in 1966.

The winners, announced by Prof. Jacob H. Jaffe, chairman of the Journalism Department at Long Island University's Brooklyn Center and curator of the awards, follow:

Foreign Reporting: Harrison E. Salisbury, *New York Times*, "for a pioneering news mission to North Vietnam that contributed a new dimension to coverage of the Vietnam war and, in significantly enlarging international comprehensions of the conflict, influenced the course of contemporary history."

National Reporting: Richard Harwood, *Washington Post*, for his series of articles disclosing the techniques, range, and implications of unauthorized electronic eavesdropping by the Federal Bureau of Investigation.

Local Reporting: Cal Olson, *Fargo (North Dakota) Forum*, "for turning a Sunday feature assignment on the anti-poverty program into a detailed, compassionate examination of every aspect of the lives of a forgotten people: the Indians of North Dakota."

Interpretative Reporting: Murray Kempton, *New York Post*, "for commentary that, although prepared within the rush of the news and under deadline pressure, has succeeded in being intellectually sensitive, morally responsive, and powerfully instructive."

Magazine Reporting: Ramparts, "for its explosive revival of the great muckraking tradition."

Criticism: Alfred Kazin.

Book: "Modern American Usage," written substantially by Wilson Follett and, after his death, edited and completed by Jacques Barzun and a group of associate scholars.

News Photography: Horst Faas, Associated Press, Vietnam.

Special Award: Arnold Gingrich, *Esquire*.

Special Award: "Time Essay" department of *Time* magazine. The awards, bronze plaques, will be presented Tuesday, March 21, in the Hotel Roosevelt, New York City.